



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cajal Defense Support Company

File : B-239217

Date: July 24, 1990

Mason Ford, for the protester.
Vera Meza, Esq., and Gerald T. Williams, Esq., Department of the Army, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency has discretion in the selection of evaluation factors for a solicitation so long as such factors reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests.
2. General Accounting Office will not consider issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.
3. There is no requirement that an agency eliminate all uncertainty or risk from a solicitation.

DECISION

Cajal Defense Support Company protests the terms of request for proposals (RFP) No. DAAA21-90-R-0007, issued by the U.S. Army Armament, Munitions and Chemical Command, Picatinny Arsenal, New Jersey, as a total small disadvantaged business (SDB) set-aside for technical support in the area of program risk assessment. The protester essentially contends that the solicitation as issued will restrict full and open competition.

We deny the protest in part and dismiss it in part.

The agency issued the solicitation on March 30, 1990, subject to the availability of funds; the solicitation provided for award of a firm, fixed-price time and materials

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contract for a 36-month period to the low, technically acceptable offeror. The RFP guaranteed a minimum of \$100,000 in orders, with a maximum order limitation of \$4.5 million. The statement of work required the successful offeror to furnish fully trained senior analyst/cost analysts and data analysts to perform work in accordance with task orders that the agency intended to issue under the contract.

The statement of work essentially called for a contractor to identify risk factors during the developmental cycle of certain programs and to provide software models by which the agency's program managers would be able to assess potential risks to the timely fielding of weapons systems for which the agency has management responsibility. The solicitation required that certain critical networks and software developed for use in risk analysis be compatible with the agency's existing computer systems available at the government site. On April 27, 10 days prior to the date set for receipt of initial proposals, Cajar filed this protest.

Cajar contends that the solicitation evaluation factors requiring award to the low, technically acceptable offeror are contrary to public law, regulation and the spirit of the Department of Defense procurement process for professional services.^{1/} Cajar argues that the agency has a history of accepting unreasonably low rates for the services under such evaluation factors.

A contracting agency has discretion in the selection of evaluation factors, and we will not object to the use of particular evaluation factors so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. ETEK, Inc., 68 Comp. Gen. 537 (1989), 89-2 CPD ¶ 29. Here, the RFP required the successful offeror to be both technically acceptable (under various technical evaluation criteria, including technical approach and experience) and to offer the low fixed-price rates. We find nothing unreasonable about these award selection factors. Moreover, while the agency may accept offers based on low rates, it is the contractor's obligation to provide the services and level of expertise called for by the contract at the rates offered; the question of whether the offeror will perform at the

^{1/} The only specific law to which Cajar refers is the Brooks Act, 40 U.S.C. §§ 541-544 (1988). The Brooks Act, however, applies to architectural and engineering services and has no application to the instant procurement, which does not require the use of architects or engineers.

rates submitted under the RFP is a matter of responsibility, affirmative determinations of which our Office will not generally review. Motorola Inc., B-236294, Nov. 21, 1989, 89-2 CPD ¶ 484. We therefore deny this protest ground.

The protester also objects to the RFP's requirement that certain critical networks and software be compatible with the agency's existing computer systems. Cajar argues that the requirement is unduly restrictive of competition because the use of compatible systems is beyond the capabilities of small minority businesses and because the solicitation restricts the ability of offerors to provide other, newer systems with all the capability of the specified systems.

The agency believes that the requirement is not unduly restrictive because the RFP does not require offerors to own or obtain the specified equipment. The RFP also provides for delivery of software to be used by the agency's personnel, who need assurance that the analyses generated will run on the equipment and systems available at the government site.

We find that the requirement at issue has no impact on Cajar, since the protester admits that it has equipment and systems fully capable of meeting the RFP requirements. The protester is not therefore the appropriate party to raise this issue on behalf of other offerors whose ability to compete is impacted by the compatibility requirement. Priscidon Enters., Inc., B-238370, Mar. 30, 1990, 90-1 CPD ¶ 345. Accordingly, we dismiss this protest ground.^{2/}

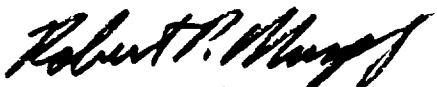
The protester also objects to the issuance of the RFP subject to fund availability and carrying no guarantee beyond a minimum of \$100,000 in delivery orders. The protester asserts that, under the circumstances, it is not worth the cost of submitting a proposal.

Federal Acquisition Regulation (FAR) § 32.705-1(a) (FAC 84-16) sanctions the issuance of solicitations subject to fund availability where, as here, the contracting officer

^{2/} Similarly, the protester, an SDB firm, is not the appropriate party to object to the agency decision to set aside the procurement for SDBs. To the extent that the protester believes that the agency will improperly award a contract to an entity that is not a legitimate SDB, its protest is premature. See generally Petchem Inc., B-233006, Feb. 8, 1989, 89-1 CPD ¶ 126.

has a reasonable basis for believing that funds will in fact be made available. To the extent that there may be risk involved under the terms of the solicitation that additional orders beyond \$100,000 will not be placed, there is no requirement that an agency eliminate all uncertainty or risk from a solicitation; the protester's decision not to expend the costs and resources necessary to respond to the RFP is essentially a result of its own business judgment. See Aldo Food Servs., B-233697.3, Apr. 25, 1990, 90-1 CPD ¶ 418.3/

We deny the protest in part and dismiss it in part.



James F. Hinchman
General Counsel

3/ In its initial protest, Cajar also argued that the RFP requirements were "non-definitive," that is, without sufficient information to adequately define proposal requirements. Cajar did not pursue this matter in its comments on the agency report. We deem it abandoned. See Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83.